SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

No. 1270

JOHN J. SPRIGGS,

Petitioner,

vs.

THE STATE BOARD OF LAW EXAMINERS,

Respondent.

BRIEF IN SUPPORT OF PETITION FOR CERTIORARI

I

Opinion and Judgment of Court Below

The opinion of the Court below is reported in 155 Pac. 2nd 285. The judgment of the court is found in Record (R. 128—The opinion—pp. 130-142).

II

Statement of Jurisdiction of the Court

The statement disclosing the basis upon which Petitioner contends this Court has jurisdiction is specifically set forth as a part of the petition for certiorari (pp. 8-9) which is adopted and made a part of this brief.

III

Statements of Case and Facts

The facts of the case and the pleadings and issues and action of the court below are likewise set forth in the petition for certiorari under heading—Summary Statement of Matters Involved (pp. 1-8) and Questions Presented (pp. 9-27) and are respectfully referred to, adopted, and made a part of this supporting brief.

IV

Assignment of Errors

The errors on which Petitioner relies upon in this Court appear in the opinion, R. 130-142 and judgment R. 128—and action of the court below and are as follows:

1. The Wyoming Supreme Court erred in holding that the publication of Petitioner's campaign letter, Ex. "A" of the complaint was not the exercise of the natural attributes and inherent prerogatives of American citizenship, and as such was Freedom of Speech and privileged and protected under the First Amendment to the Constitution of the United States and also under Sec. 20, Art. I of the Wyoming constitution.

2. The Wyoming Supreme Court erred in holding that the campaign letter, Ex. "A" of the complaint, and its publication by petitioner to be unprofessional conduct on his part, constituting a violation of his oath, and of his duties as attorney, and adjudging that the letter was not freedom of speech and privileged and protected as such under the First Amendment to the Constitution of the United States, and also under Sec. 20 Art. I of the Wyoming constitution.

3. The Wyoming Supreme Court erred in denying petitioner due process of law as was done in the court's procedure and judgment herein, as such due process of law was guaranteed petitioner by the Fourteenth Amendment to the Constitution of the United States. Such due process of law was denied petitioner by the court herein, and appears in one and in all of the following particulars, all of which appear by the record of the case, and in the proceedings of the court in its trial and judgment, any one of which constitutes by itself, a denial of the due process of law under said 14th Amendment to the Constitution of the United States, towit:

Such due process of law was denied petitioner by the court's action in;

a) Its failure to recognize, uphold and protect petitioner's constitutional right to exercise his freedom of speech, and to exercise his natural attributes and inherent prerogatives of American citizenship, so exercised by the publication of the campaign letter, Ex. "A" of the complaint;

b) Its failure to grant petitioner a jury trial; and compelling him to submit to trial by a three-judge panel in the lower court (R. p. 79);

c) Its conduct in compelling petitioner to submit his case, rights and welfare in the Supreme Court to three district judges, including Judge Ilsley, the identical district judge who sat with the supreme court in 50 Wyo. 277, the opinion criticised, and who rendered the opinion therein;

d) Its conduct in excluding the TRUTH offered in justification of the statements of the campaign letter, and disregarding the legal authorities, and the rules of reason offered in support of the TRUTH and correctness of the legal opinion set forth in the campaign letter (R. 111-114);

e) Its conduct in finding respondent guilty of unprofessional conduct, and entering judgment suspending petitioner from the practice of law for 6 months thereafter, and further depriving him of his safety and security to enjoy the FOUR FREEDOMS in the future, now recognized as attributes of national citizenship; and thereby impairing and abridging and destroying his right to exercise the natural attributes and inherent prerogatives of his American citizenship;

f) Its conduct in misconstruing Sections 9-112 Wyo. RS 1931, as amended by Ch. 112 Wyo. S. 1 of 1937; and sections 9-113-114-116 of the Wyo. statutes, and the rules of the Supreme court, and unconstitutionally applying those statutes and rules as conferring jurisdiction on the court to hear this case, and enter the judgment it did herein, and in so misconstruing the campaign letter as matters within the scope and meaning of those statutory provisions and court rules; (For Rule See Opinion—R. 140).

g) The court erred in denying the motion of petitioner to require the complaint to be made more definite and certain by stating what parts of the campaign letter were false, defamatory and unprofessional conduct (R. 8-10-11);

h) The court erred in denying petitioner's motion to dismiss because of non-appearance of complainant members made at the beginning of the trial (R. p. 77);

i) The court erred in denying petitioner's motion to dismiss made at the close of complainant's case (R. p. 80);

j) The court erred in not sustaining the demurrer (R. 12-17-79—p.): See opinion 130-142.

k) The court erred in its order of Sept. 12, 1944, calling in district judges Ilsley, Metz and Thompson to sit as a

supreme court, and not sustaining petitioner's objections thereto (R. 115);

l) The court erred in not sustaining the objections and exceptions of petitioner to the recommendations of the three-judge panel (R. 120-7).

Summary of Argument

In the foregoing petition for certiorari under the heading "Questions Presented" petitioner set forth ten questions, arranged in 5 GROUPS, presenting the federal questions raised by the record and the judgment and decision of the Wyoming Supreme Court herein. Therein and following those questions presented in each GROUP, he set forth portions of the record with his contentions, and cited and quoted authorities applicable to the record and questions presented, all of which petitioner believes sufficient to resolve all those questions in favor of petitioner and to establish the errors of the Wyoming Supreme Court in its judgment and decision herein which require a reversal by this court of that judgment and decision herein. Petitioner now refers to and adopts that portion of the petition for certiorari, and the portions of the record arguments, contentions and authorities cited, and makes them a part of this supporting brief to all intents and purposes as if re-copied herein at length. Further petitioner says that in the Assignment of Errors in this brief, he consolidated those 10 questions into three Assignments of Error, towit; No. 1-2-3.

In assignment No. 1 he contends the campaign letter, Ex. "A" of the complaint was a constitutionally privileged communication, and as such was Freedom of Speech, and that by the judgment herein there was a denial to him of that Freedom of Speech in violation of the First Amendment to the Constitution of the United States rendering the

Wyoming judgment void, requiring reversal thereof by this court.

In assignment No. 2 he makes the same contentions as to the letter and its being Freedom of Speech, and contends there was a denial to petitioner of such Freedom of Speech in violation of Sec. 20 Art. I of the Wyoming constitution, coupled with a further denial to the right to a jury trial, and to justify the letter by TRUTH, for the alleged abuse of such Freedom of Speech, being also a denial to petitioner of due process of law as guaranteed him by the Fourteenth Amendment to the Constitution of the United States, rendering the Wyoming judgment void and requiring reversal thereof by this court.

In assignment No. 3 petitioner contends that in the procedure of the court herein and in the trial, he was denied due process of law, and the right to a fair and impartial trial as guaranteed him by the Fourteenth Amendment to the Constitution of the United States, and also by the American concept of justice to a fair and impartial trial, and as guaranteed him by the dictates of common and natural justice, rendering the Wyoming judgment void, and requiring reversal by this court. Under such assignment he set the particulars of the procedure he contends violated his right to due process of law and to a fair impartial trial.

As to assignments 1 and 2, petitioner contends the authorities cited from this court alone defining the natural attributes and inherent prerogatives of American citizenship, and defining freedom of speech as a part of every citizen's right, especially the recent case of *Baumgartner* v. *U. S.*, 64 Sup. Ct. Rep. 1245; and *Hartzel* v. *U. S.*, 64 Sup. Ct. Rep. 1238, are clear and to the point, and place the campaign letter, Ex. "A" of the petition, herein as unquestioned freedom of speech under the First Amendment of the U. S. constitution and also Sec. 20 Art. I of the Wyoming

constitution. If so, the judgment of the Wyoming Supreme Court is a denial to petitioner of his constitutional freedom of speech under both constitutions, and is void and this court should reverse the same, as the duty of the government to protect every citizen in the full enjoyment of those rights.

The cases of *Paterson* v. *Colorado,* 205 U. S. 454; and *U. S.* v. *Cruikshank,* 92 U. S. 542; and *Craig* v. *Hecht,* 263 U. S. 255; and *West Va. Bd. of Ed.* v. *Barnette,* 319 U. S. 624, clearly establish that the right to criticize courts and judges is freedom of speech, and such freedom of speech is not impaired because it is a court. The cases *Re Hart* 104 Minn. 88; *Ex Parte Steinman,* 95 Penn. St. 220, to which in the reporter's note, 40 Am. Rep. 637, is cited other cases; *State Ex Rel.* v. *Circuit Ct.* (where prohibition lies to prevent prosecution of such a proceeding as is brought against petitioner), 97 Wis. 1; *Ex parte Owens,* 258 Pac. 802; *Owens* v. *Clark,* 6 Pac. 2nd 761, where they did follow a like procedure to Sec. 20, Art. I, Wyo. const.; *Re Pryor,* 18 Kan. 72; *Jackson* v. *State,* 21 Tex. 668; *State* v. *Kaiser,* 20 Ore. 50; *State* v. *Tugwell,* 19 Wash. 256, all establish that an attorney does not surrender any of his constitutional rights by being an attorney; that in criticising courts on past concluded court decisions, he does not violate his oath as attorney, nor violate his duties as attorney; and that such criticism like unto Petitioner's campaign letter is freedom of speech and constitutionally privileged as such. Further they establish that an attorney's right to practice law is his property. And James Buchanan, ex-President, in his trial of Judge Peck (See Congr. Rec. Mch. 2, 1937, p. 2218), points out that an attorney has the same right to his profession as any other citizen, the mechanic, merchant, musician, laborer, no matter what the occupation, and that the attorney can be given no different punishment for the same conduct than applies to other citizens. This means

a jury trial, with TRUTH as justification, for alleged abuse of free speech.

These authorities establish that the denial to petitioner of his constitutional guaranty of freedom of speech violates both said U. S. and Wyoming constitutions. And this of itself is a denial of his constitutional right to due process of law under the 14th Amendment to the U. S. Constitution, and they thereby sustain assignment No. 3.

It necessarily follows that by denying petitioner his freedom of speech, and due process of law, all the other errors of the assignment No. 3 are established. Therefore, it was error to deny a jury trial; and it was error to exclude the TRUTH offered as justification of the campaign letter; it was error not to sustain the demurrer; it was error not to sustain the motion to require complainant to point out what parts of the letter were false; it was error not to sustain Petitioner's motion to dismiss at the close of complainant's case; it was error not to sustain his objections to the recommendations; it was error to enter the judgment finding Petitioner guilty of unprofessional conduct, and of a violation of his oath and duties as attorney, and to suspend him from the practice of law for 6 months; it was error of the court to assume jurisdiction and hear the case and render the judgment it did; it was error to call in a three-judge panel to sit in the district court; it was error to make the order of Sept. 12, 1944 calling in the three district judges to sit as a supreme court; it was error to call in Judge Ilsley to sit on his own case; it was error not to sustain the motion to dismiss because the complainants failed to appear, as it was their duty and their case, and not the Attorney General's case. Petitioner had a right to cross-examine them to inquire as to what parts of the campaign letter were false, and ascertain their reasons for so asserting.

In establishing the error in denying petitioner a jury trial and compelling him to submit his case to a three-judge

panel in the district court, the same directly violates his constitutional rights under Sec. 20, Art. I of the Wyoming constitution.

In establishing the error of the supreme court calling in Judge Ilsley and Metz and Thompson, it violated the American concept of right and justice and the right to a fair impartial trial. Re Hart, *supra*, states it as a proposition TOO MONSTROUS TO BE ENTERTAINED FOR A MOMENT UNDER OUR SYSTEM, that is our concept and requirements of justice and a fair trial.

Ex-Pres. Buchannan in the Peck impeachment trial—*supra*—said the very attempt to do such a thing, WOULD CONVULSE THE PEOPLE IN THIS LAND OF LIBERTY AND FREEDOM, and it could not be endured SO LONG AS LIBERTY SHALL LAST.

And petitioner refers to his quotations from the Wyoming Constitutional Convention set up in his motion and objections to the order calling in three district judges (R. 116-119) as aptly exhibiting the American concept of justice, as applicable hereto.

Criticism of courts is healthy. It is necessary to a high standard of judicial service. Why elect judges by popular vote, if voters cannot be informed of judges and the conduct of courts? What would have happened to American civilization, and to moral, religious, and social progress if people had been penalized for criticising the opinion of the Supreme Court of the United States in the *Dred Scott* case, decreeing that a colored person was not a human being within the meaning and protection of the constitution of the United States, but was a mere chattel, like a horse or beast of burden? Theodore Roosevelt not only criticised courts, but he urged the recall of judicial decisions by popular vote on constitutional questions. Candidates Dewey and Bricker in the last presidential campaign criticised the Supreme Court of the United States with intemperateness unlimited. The authorities cited herein point out that re-

spect for courts is not impaired thru criticism but that they stand or fall on the quality of their justice. Confidence in courts is preserved by weeding out incompetent judges.

The attitude of the Wyoming court herein in not pointing out the parts of the campaign letter charged, and by it found to be false, yet making a finding that the letter is false and untruthful, presents a situation hard to argue. The litigations began March 17, 1928, and were concluded Jan. 1940, and involved 5 cases in the supreme court and 2 others in the district court. The files introduced in the trial herein are too voluminous to mention scarcely a few high spots. If it is immaterial whether the legal opinion expressed in the campaign letter be right or wrong, as we think it is, then the truth need not be argued. But the supreme court took the opposite view. They found it was false. They said it was immaterial whether the court was right or wrong in its decisions criticised.

Petitioner was a candidate for the public office of supreme court justice in the 1942 campaign. The letter, Ex. "A" of the complaint (R. 3) was circulated as his political platform. It set forth his qualifications for that office, and revealed his conception of right, law and justice, and ethics, and necessarily those of the chief justice opposing him. It set forth his legal opinion on the unsoundness of the action of the Wyoming Supreme Court in two past concluded court decisions, towit; *Tibbals & Spriggs* v. *Graham Receiver*, 50 Wyo. 277, rendered Oct. 7, 1936; and *Tibbals & Spriggs* v. *Graham*, Receiver 55 Wyo. 169, rendered Jan., 1940.

There was no attack on the private lives of any judge. There was no attempt to influence pending judicial action, and none was charged. The opposing candidate was Chief Justice Riner, running for re-election on his record and the record of the court, over which he presided. He sat as judge in both the opinions criticised. The campaign letter

referred to the official action of the court and Judge Riner and was therefore comment on public men and measures in a political campaign wherein the matters involved were of great public concern in the election of a judge.

The opinion of the court in 50 Wyo. 277 was rendered by Judge Ilsley, sitting with supreme judges Riner and Blume. The third supreme judge, Kimball, did not sit. Judge Ilsley is the identical judge who sat in the case herein with two other district judges, Metz and Thompson. Judge Kimball, the regular supreme judge did not sit in either case, but was available in both. Petitioner was a co-litigant in both the cases criticised, and was attorney for Tibbals throughout all the litigations involved. It was his property and rights adjudged in both cases (See opinion, par. 9, R. 131).

Back in 1936 at the time the opinion in 50 Wyo. 277 was rendered, Petitioner was then a candidate for supreme court justice. Therein as his platform he urged judicial reform by a reduction in court costs making it possible for a poor man to appeal his case and not be denied review because of prohibitive costs.

In his campaign platform Petitioner quoted leading jurists, including Ex-president and also former chief justice of this court, Taft, who had urged that excessive court costs tended to defeat justice thru inability of the poor litigant to appeal. Petitioner applied the argument to Rule 37 of the Wyo. Supreme Court, adopted Sept. 30, 1930, wherein the court had required an appellant to file printed or type-written copies of abstracts of the record, pleadings and evidence. This extra burden added to the statutory costs of paying for a type written transcript prevented poor litigants from securing an appeal. Petitioner urged that if elected, he would abolish the rule.

The opinion in 50 Wyo 277 was rendered in the heat of the campaign and just before election. In his campaign adds petitioner has referred to the "life of ease of the

judges" and to the "costs of appeals" and the burdensome requirement of abstracts. In the official opinion in 50 Wyo. 277, the court injected statements as to "the life of ease of judges", and "abstracts need not be printed" and "costs of appeals are no more than in other states". The newspapers accepted and published the official opinion as an answer to petitioner's campaign criticisms. In par 3 of the campaign letter herein, petitioner called this to the attention of the voters. The newspapers were offered in evidence at the trial herein in support of the TRUTH of the statement, but the court excluded them (R. 111-114). The supreme court quotes the statement of par. 3 in its opinion (R. 135) (page 288, as a part of its findings of unprofessional conduct). Thus justification by TRUTH is denied, and TRUTH becomes a crime instead of a virtue.

The court further made an improper and unwarranted application of this par. 3 with reference to petitioner's conduct in the prior campaign, saying, page 289 (R. 137):

> "Another matter indicating his attitude towards the Supreme Court in his statement in par 3, showing he had been criticising the court while it had under advisement the case mentioned in par. 2."

This reveals the attitude of the court and its frame of mind, both in the present action, and the prior 50 Wyo 277. It is the mind of the same Judge sitting in both cases, herein interpreting his view of court criticism as unprofessional conduct, and denouncing petitioner for his prior campaign to reform judicial procedure along the lines urged by leading jurists of the time. Necessarily it portrays the state of his mind at the time he delivered the opinion in 50 Wyo 277, which as reasonably seen, is that he was then resenting this campaign to reform court procedure. The Supreme Court of Oklahoma, Ex Parte Owens 258 Pac. 1 c 779, wherein a lower court freed an attorney from the wrath of

the Supreme Court, quoting Hamilton, in turn quoting Edmund Burke, says:

> "PUBLIC OFFICERS HATE OPPONENTS—All history proves that public officers of any government, when they are engaged in a struggle to retain their places, become bitter and revengeful, and hate those who oppose them —even in the most legitimate way—with a rancor which they never exhibit toward crime."

In Petitioner's objections to the order of the Supreme Court calling in District judges to sit herein (R. 116-7-8) he quoted arguments of Wyoming Constitutional builders revealing their conception of how the minds of brother judges work to sustain one another. Applied to this case, they believe that if a litigant were compelled to submit his rights to a Supreme Court, one third of whom was dead against the litigant, Wyoming was not fit to become a state and they should adjourn and go home. Today they would say Wyoming has *forfeited its right to retain its place in the Union.* Three district judges, two of them, Ilsley and Metz, were re-elected at the last November election without opposition. With the judgment of the Wyoming supreme court herein sustained, penalizing freedom of speech and criticism of courts in a political campaign, no attorney can ever assume the hazzard of becoming a candidate, or urging judicial reforms or betterment. And with the conception of a State's duty to curb such court action against criticism of their decision, these constitutional builders gave the citizens Sec 20 Art I thereof, guaranteeing freedom of speech with a jury trial and TRUTH as a defense for any alleged abuse.

The was no issue in 50 Wyo. 277 involving the "life of ease of judges," or "abstracts need not be printed", or "costs of appeal are no more than in other states." Those were campaign issues outside the case. The injection of these matters into the official opinion, coupled with the ac-

ceptance and publication by the press (R., p. 111-114) as an answer to the campaign adds, impressed Petitioner and his co-litigant as improper, and revealing an unjudicial state of mind in the court, and raised a suspicion that they might not receive an impartial rehearing. They called this to the attention of the court in a courteous manner (R., 106-7-8) as stated in par. 4 of the campaign letter. The Supreme Court considered this contempt. Petitioner set up his different conception in the campaign.

At the same identical time there was pending in the Supreme Court of the United States three cases, No. 353-354-355 (Set up in the answer (R. par. XIV Ans. p. 27)). In that high court the litigants and attorneys filed a Second Petition for Rehearing, and they set up the bias and prejudice in the court. A copy thereof was offered in evidence herein, Ex. 10 but rejected.

The U. S. Supreme Court did not condemn the litigants and attorneys as contemptuous or guilty of unprofessional conduct, but the proper assertion of legal rights. This action of that court was the concept of this Petitioner, and it was in strict harmony with high concept of the bounden duty of an attorney to present the rights of his client, as set forth by Ex-president Buchannan in the U. S. Senate, in the prosecution by impeachment of Federal Judge Peck who had fined, imprisoned and disbarred Atty. Lawless for criticising the judges opinion. (See copy of same, Cong. Rec. Mch. 2, 1937, page 2218)

Par. 1 of the campaign letter is borrowed from the creed of Abe Lincoln—"It is not necessary that I win but I must live up to what light I have" and joined with the inscription expressing the concept of justice often arching the door way to courts—"Oh, Justice, when driven from other habitations, come, make this Thy dwelling place", and then follows Petitioner's concept of his duties as a citizen and

attorney, to expose—"judicial bias, prejudice, failure and incompetency." There is no charge of corruption therein. That word was added by the court. If petitioner had wanted to use that word he would have put it in. This par. of the letter is set forth in the opinion herein as false, defamatory and unprofessional conduct. (Opinion 288, R. 136.)

Par. 2 of the letter sets forth Petitioner's legal opinion of the unsoundness of the Supreme Court's opinion in 50 Wyo. 277. He is of the same opinion still—but now stilled thru denial of his, further right to think and express that opinion. The Three Wyoming Supreme Court decisions set up as nullified are; 40 Wyo. 524, Oct. 1929, which was the final judgment of that court establishing the Tibbals trust in property in his suit filed March 17, 1928, and ordering the property sold. Next 42 Wyo. 214, wherein the Supreme Court dissolved a restraining order of the lower court enjoining Tibbals from executing the mandate; and case 1676 in the Supreme Court, which was an appeal by Federal Gold Mining Co., designated in 40 Wyo. 524 as a Spry owned "paper corporation" from the judgment on the mandate in 40 Wyo. 524 and order denying intervention.

The Fourth final judgment of the district court was case 4623 therein, filed April 7, 1931, *Federal Gold Mining Co.* v. *Tibbals,* wherein this same "paper corporation" again restrained Tibbals from executing the judment on the mandate of 40 Wyo. 524 and seq. (R. 95-8). After a long litigation, wherein every issue was decided for Tibbals, the court carried out the mandate of 40 Wyo. 524, sold the property to satisfy the Tibbals trust, and deeded the property to Tibbals and confirmed sale. Every issue was made, and adjudged in this case in favor of Tibbals, that was subsequently decided to the contrary in the collateral case, 50 Wyo. 277. The matter of custody of the

property (R. 96), and the matter of the option validity, were adjudged in conformity to the universally established law of the land. The Lis Pendens and lien statutes of Wyoming were upheld, in this Direct Ancillary action that were nullified in the collateral action, 50 Wyo. 277. The records of these prior litigations were set up in this present trial herein (Par. XVII and seq. R. 29). Express Statutes Nullified by 50 Wyo. 277—First Sec. 89-825—the Lis Pendens, which inhibits a subsequent lessee from acquiring any adverse right to properties after service in suit. Dates—Mch. 17, 1928, Tibbals filed and served suit to appropriate these properties (R. 29). On Oct. 10, 1928, while the Tibbals suit was in the Supreme Court, the Spry executors, defendants therein, joining with the Federal Gold Mining Co., designated in 40 Wyo. 524 as a Spry owned "paper corporation"—it was all one entity, and so judicially adjudged in case 4623—gave a 4 yr. lease, from Oct. 10, 1928 to Oct. 10, 1932, on these same properties (R. 30). Therein was an option to purchase for $18,000 plus some shares of stock, during the term.

Nov. 3, 1930, a creditor sued the lessee, Midwest Mines Co., to collect $901.25 wages. On allegation of insolvency, Graham is appointed receiver of the lessee. (See opinion 50 Wyo. 277.) (R. 34.) By express statute neither the lessee, nor its creditor could have any adverse right against Tibbals (Sec. 89-25). Further the Wyoming lien laws confine the rights of a creditor of a lessee to the leasehold and property of lessee. The Wyoming Supreme Court in *Geo. Bollin* v. *North Platte Valley Ir. Co.* 19 Wyo. 524; and in *National Supply Co.* v. *Stanton Weaver,* 35 Wyo. 224, had declared this to be the law of Wyoming.

And in case 4623, the district court directly adjudged the receiver had no claims against these properties, and

excluded him from any share in the surplus at the sale (R. 99-100). The decision in 50 Wyo. 277 was contrary to these statutes, and the final judgment in case 4623. So stated the campaign letter.

Case 4623, a direct ancillary action, enjoins Tibbals, defendant therein, from executing his mandate from the supreme court. He wanted to know where he was after THREE trips to the supreme court. He filed a plea specifically alleging that these properties were in custody of law in his prior suit (R. 96). On final judgment the court sustained the plea. But in 50 Wyo. 277, the supreme court in that collateral action, nullified the judgment on this point. The court in 4623 had adjudged in conformity with the universally established law of prior custody in such direct action. In the collateral action the supreme court was contrary to the universally established law of prior custody.

Further in case 3623 Tibbals demanded to be relieved from repeated, never-ending litigations by these same parties. He plead his mournful plea asking relief (R. 97). On final judgment the court sustained this plea. It again decided every issue in favor of Tibbals, carried out the supreme court mandate by sale and deed, and adjudged that the Plaintiff,—FGMC, the Spry paper corporation had at all times been an actual party to the prior litigations 40 Wyo. 524, and was precluded thereby. The court made the judgment in that prior case a part of its judgment therein. Then it gave Tibbals a permanent injunction forever enjoining the other parties from interfering with his rights to execution, or from enjoying the fruits of his judgment, or from interfering with the rights of the purchaser at the sale. And he excluded the receiver from any rights even to the surplus at the sale (R. 99-100, Trans.).

THE OPTION—R. 86-7 and Seq. Also p. 38

The court fixed the sale for Oct. 15, 1932, by strict foreclosure with no right of redemption. The owners and the receiver had tried to sell the properties but failed. While the sale was being advertised they contacted Quinn, who would purchase IF the mine stood the test. He could not make the test before date of sale. The owners and receiver asked Tibbals to do them a favor—to extend the time of purchase to Jan. 1, 1933. Tibbals consented to do so if the option be reduced to writing, acknowledged, then submitted to and approved by the court. All this was done. The court made his order in the case approving the option and directing that sale be conducted accordingly. Then the other parties, including this same Graham, filed a written ratification, both of the option, and of the order approving the option, and asked that sale be made and confirmed without further notice.

Briefly stated, there were three separate options. The Tibbals option was signed by the owners, Spry estate and Federal Gold Mining Co., by their attorney; the receiver by his attorney; optionee, by his attorney; and Tibbals for himself. It was duly notarized by such parties. Tibbals demanded the parties ratify the acts of their attorneys, hence the written ratification. This option provided, that for the mutual benefit of ALL parties owning or claiming any interest,—then stating the terms.

The option provided that it was understood Tibbals would only bid the amount of his judgment at the sale; and that any third party could bid $1. or any sum over his bid and take the property. And that for the protection of the parties, Tibbals would bid such sum as the other parties directed in order to prevent this, but he was relieved from any obligation to account for any surplus. If the

mine stood the test, he would receive the full amount of his judgment, plus $5000. agreed upon as stipulated damages for all the malicious injunction actions.

By a second option, if the mine stood the test the owners would receive some $39,000; and by a third option, the receiver would receive $34,500, which included $5000. receiver fee; and $5000. attorney fee; and some $4000. receiver charges (R., p. 16, Trans.).

The mine failed to stand the test. Tibbals twice extended the option for further tests. On Mch. 1, 1933, the optionee threw up the option. Graham went and took possession. Tibbals & Spriggs brought ejectment, 50 Wyo. 277.

In the meantime, over in the receivership case, the court in case 4561 on application of the receiver to close the receivership, sold, Sept. 1, 1932, the lease with its unexpired term of 6 weeks, and all other personal property of the lessee, for $34,500 in full satisfaction of all creditor claims, alleged liens and general creditors, and the receiver and attorney fee, and costs and gave conveyance (R. 48). The property was purchased by the creditors, taking title in one of their number, Graham, as trustee, who chanced to be the receiver also. Then Graham, signing as Trustee, optioned the property to Quinn as aforesaid (R. 92).

When case 4623 was filed enjoining Tibbals from executing his Supreme Court mandate he filed a plea to jurisdiction, challenging the jurisdiction of the lower court to again enjoin execution of the Supreme Court mandate of 40 Wyo. 524. On two orders of court, one in the receivership case, 4561, and one in case 4623, the receiver was directed to appear in case 4623 and resist the Tibbals plea of lack of jurisdiction in the court. He did so and the court held with the receiver, thereby holding Tibbals in the case as defendant and making him re-litigate all over again these same

rights. Then the receiver set up his alleged claims (R. 95). In the final judgment every issue was adjudged in favor of Tibbals.

In the subsequent collateral ejectment case, 50 Wyo. 277, the receiver flip-flopped and set up that the sale in case 4623 was void because the court lacked jurisdiction, just the reverse of his prior contention inducing the court to hold it had jurisdiction. The Wyoming Supreme Court, *Posten* v. *Delfelder*, 39 Wyo. 163, declares as law, that to permit a party to come into court and induce a court to take action one way, and then afterwards flip-flop and contend the reverse, is conduct so INTOLERABLE, that the court will not even lend him an ear, it being immaterial whether the court did or did not have jurisdiction.

Par. 2 of Petitioner's campaign letter states his opinion that the Supreme Court in 50 Wyo. 277 had rendered an opinion contrary to the universally established law, and nullifying its THREE prior decisions for Tibbals, and the FOURTH district court decision decreeing sale, and in opposition to Wyoming statutes, its constitution, and general law. The statement is true, and the authorities and rules of reason say it is true.

The court in 50 Wyo. 277 decreed the property was in custody of law in receivership in case 4561. This is to say that the Res in receivership proceedings of a lessee, is not the lessee's right in a lease, and his other property, but it is the fee simple title of the owner. That is taking property without due process of law. The Res in receivership is the fund in court, which then belongs to the lessee and can be used to pay the debts of the lessee. This is to say that when Graham at the receiver's sale purchased the property of the lessee, the 6 weeks unexpired term of the lease, he can hold possession years after the lease had expired, and then claim

and sell the fee simple title of the owner, to pay again the debts of the lessee.

The court declared the judicial sale in case 4623 was void. It stated Two propositions of law as reasons therefor. First, there was FRAUD in the sale by Tibbals. Second—The court had no jurisdiction, because the property (—it is speaking now of the fee simple title of the owners, not the lease or property of the lessee, all of which had been sold)—was in custody of law in the receivership case 4561.

The two propositions of law, as abstract propositions, standing alone would be sound if facts supported either. In fact the court states the law of prior custody, but by misapplying the facts, it denied Tibbals & Spriggs the benefit of the very rule of law on which they based the decision.

In one breath, the court said that if Tibbals had asserted his rights first, then he should prevail, but that he did not assert his rights until long after the receiver's rights accrued. The files of both cases were before the court. Tibbals filed and served his suit March 17, 1928. He got the Supreme Court judgment establishing his right Oct. 1929 (40 Wyo. 524). He was ever thereafter restrained. Which is first in time, Nov. 3, 1930, the date of the receivership case, or March 71, 1928, the date of the Tibbals suit?

The judicial sale was in a direct action, ancillary by injunction, and every one of these questions were adjudged in favor of Tibbals. Under all the court decisions, that prior proceedings is first in jurisdiction, and any action by a subsequent concurrent court is futile and void.

FACTS AND LAW OF FRAUD—In law fraud is deceit, taking an unfair advantage, thru some trick. Tibbals agreed at the request of the other parties to assist them, for their own protection to prevent some third party from getting the property for a $1 or so over his judgment. He agreed to

accommodate them, with the approval and assistance of the court, by giving them a chance to realize these substantial sums instead of the nothing they would otherwise get (R. 89 and seq.). A court is duty bound to assist owners at a judicial sale in their efforts to realize their best prospects, as they see them. Tibbals signed an acceptance and agreed to faithfully perform his part, and carry out instructions (R. p. 94 trans.)

Tibbals was to act as the agent for the other parties. He could not commit an actual fraud on them by consenting to do them the favor they asked, that is, help them in chance to realize substantial sums instead of the nothing all knew they would otherwise get. And Tibbals was to act as their agent, and bid as they directed. An agent cannot commit a fraud by carrying out instructions of the principal.

FRAUD IN LAW: The Supreme Court of the United States in the leading case of *Throckmorton* v. *U. S.*, 98 U. S. 61, followed by Federal and State courts, and without a dissent, states the law of fraud in judgments and sales, declaring that in order to constitute, even evidence of fraud to which a court will listen, to vitiate a judicial sale or judgment, the fraud must be EXTRINSIC fraud, and definies that as something not before the court, or that could not have been with reasonable diligence presented to the court. And further defining it as some act of the prevailing party that prevented the other party from having a hearing, or from presenting his case. Here at the request of the other parties, the option was presented to the court, and the court by written order approved the option. And then the other parties, including this same Graham, came back and by written ratification, ratified both the option and the order of the court approving the option (R. p. 93 trans.).

Par. 5 of the campaign letter stated that Tibbals & Spriggs had been branded as frauds without the semblance of jus-

tification in fact or law. Such a branding by a court is immeasurable. The public believes what the court says. Tibbals went to his grave under this unjust condemnation. He is deprived of his property by such unjust decree. Petitioner, then a candidate, was equally smeared before the people of the State, was also deprived of his property, and both defamed for accommodating other parties, and for placing their trust in the court, wherein Tibbals was defendant, and relying on the courts official action.

Freedom of speech compels Petitioner to place the record before the people that friends, neighbors, and strangers may know the facts and form their own conclusions.

> "Men who are honest, when charged with fraud, are not content with merely casting over the challenged transaction an atmosphere of doubt. They are determined to clear their names".
>
> *Bays* v. *Brown*, 86 Pac. 2nd 954.

Second Proposition of Law—The sale was void because the property was in custody of law in the receivership of the lessee case 4561. The universally established law of the entire nation, as declared by the Supreme Court of the United States,—*Kline* v. *Burk Construction Co.*, 260 U. S. 226; *Riverside Cotton Mills* v. *Ala. & Ga. M. Co.*, 198 U. S. 189; and others without end; by the Federal courts—*Lang* v. *Chotaw*, 160 Fed. 355; *Brun* v. *Mann*, 151 Fed. 145, and others without end; by *Ketchem* v. *District Court*, 198 Pac. 483; *Standolind Crude Oil* v. *Busey*, 90 Pac. 2nd 877; *State Ex Rel Sullivan* v. *Reynolds, Judge*, 209 Mo. 161, and other State courts on without end,—there is not a single dissent—all State the law of prior custody as follows:

> "That from the time of filling the bill or service, in a suit to appropriate specific property to plaintiff's claim, the property is thereby, as a matter of law, in the prior exclusive, continuing custody, jurisdiction and control

of the court therein in that case, which custody and jurisdiction continues to final judgment, and sale, then on to protect the title of the purchaser. And during this time no subsequent concurrent court has jurisdiction or power to obstruct, delay, defeat, or otherwise interfere with that prior custody and jurisdiction, and any attempt to do so is futile and void."

The reasons assigned by the courts for the rule is that it is necessary; to orderly procedure; to prevent conflicts; to carry out the purposes for which courts are created; to give force to judgments; to protect titles of purchasers; to protect litigants from endless litigation; to preserve public confidence in courts; for the safety and welfare of society, etc. (R. 31).

Applied to the facts, Tibbals filed suit to appropriate these specific properties to his claim and secured service March 17, 1928. The court in those proceedings had prior exclusive custody, jurisdiction and control of the properties on thru all the litigations to final judgment, sale and deed Oct. 15, 1932; and thereafter to protect the title of purchaser Tibbals. Sec. 89-825 Lis Pendens prohibited the lessee or the receiver from any adverse rights. And when the Supreme Court of Wyoming in 50 Wyo. 277 overturned the judicial sale made in case 4623, which carried out the mandate of the Supreme Court in 40 Wyo. 524 it disregarded all this universal law. And when it told the receiver of a subsequent lessee to hold that property in the lessee's receivership, it violated all this law and rules of reason.

Further the owners and parties who sued Tibbals in case 4623, ratified the judgment and sale, and filed a waiver of right of appeal and made the judgment final and absolute (R. 93). They secured release from the malicious prosecution (R. 87). And they were not parties in 50 Wyo. 277, yet the court set aside the sale they asked without a chance to be heard.

Petitioner had been thru all the long litigations. He saw the mills of justice stop and refuse to grind further. He exercised his right to think. He saw the failure of justice, and when the judge responsible came up for re-election he expressed his opinion. The Supreme Court said his opinion was false, untruthful. It made the requirement that opinion in freedom of speech must be right. But by what standard? The opinion was right according the decisions of all the courts of the land, not a dissent. But it was wrong in the opinion of the court who had rendered the wrong opinion criticised. It is recognized in law that where opinion is arrayed against opinion, and there are physical facts entering which conflict with opinion, the opinion must give way to physical facts.

Here are the facts: March 17, 1928, Tibbals had an original investment of $17,500 evidenced by an undisputed first trust lien on specific properties. That day he filed suit in the proper court, in the proper way to foreclose that trust lien. On Oct. 1929, the Wyoming Supreme Court, 40 Wyo. 524, established the trust, decreed sale to satisfy the trust. The decree of the highest court in the State must be final. One trip to that court is enough. Tibbals had to go back twice more and get two more decrees from that court. Then he is again enjoined from executing the highest court decree, and compelled to relitigate the FOURTH time, the same matters, with the same parties and privies. (Case 4623.) Finally, he gets judgment, the mandate of the Supreme Court is executed by sale, Oct. 15, 1932. He is purchaser, and gets deed, backed by all the solemnity of a final court decree and a permanent injunction enjoining the other parties from forever thereafter interfering with his right thereunder, or the title acquired at the sale. The other parties all ratify the court's action. His original investment of $17,500 is merged in the judgment and deed.

But 4 years later that same Supreme Court nullifies all this. It directs the receiver of a subsequent lessee to withhold, year after year, possession from the owners. While in the custody of the court, to use its terms, the court permits a tax deed to issue (R. p. 102) and wipe out the estate, even from the court. The original investment is lost. The property acquired by the deed is lost. Sec. 8, Art. I of Wyo. constitution guaranteed Tibbals and Petitioner they should both have justice, "without sale, denial or DELAY". Justice delayed is justice denied. Tibbals struggled on to his death Nov. 1939 all the while asking the court to give him possession of his property. He not only lost his property but he lost his reputation as an honorable citizen, being branded a FRAUD by the court for accommodating the other parties, at their own request, by trying to help them realize substantial sums of money instead of nothing, and further by placing his trust and confidence in the court that by written approval directed him to grant the favor. In Jan. 1940—(2 months after his death) the Wyoming Supreme Court, 55 Wyo. 169, closes the court doors to efforts to get possession of his property, and says: You can't sue again. We were right in all that we did in 50 Wyo. 277. Now keep quiet, don't sue any more and let the court sell this property in the receivership of the subsequent lessee. That was over 5 years ago. No court in Wyoming to which appeal can be made. The property, either viewed as an original investment, or as property merged in the judgment, is wiped out by court deed. The first duty of every court is to protect property in its custody from loss. What is the answer to Wyoming's constitutional guaranty—"Justice without denial or delay"?

The Last Word

January 23, 1945, the Wyoming Supreme Court closes its books with the Last Word saying: "Petitioner, for telling

this to the voters, and exposing the record take this further condemnation—"Unfit to Practice Law—Suspension and Loss of Livelihood." Petitioner has lost his property, he has lost his reputation, branded first as a fraud, and then as Untruthful in opinion. Now he loses his livelihood. And like the man held in jail without a charge, listening to the assuring voice of his attorney: "That's unconstitutional, it can't be done here" your petitioner knows too well, physical facts speak saying, constitution or no constitution, It is Done Here."

The campaign letter said "Justice like truth, when crushed to earth will continue to cry out until it rises again." Today it cries out from the grave of Tibbals asking: "Where is my original investment of $17,500? Where is my property deeded to me Oct. 15, 1932, under mandate of the Supreme Court of Wyoming? Of what force was the mandate I got from the Wyoming Supreme Court Oct. 1929? Where is the honor of my good name, and my good reputation destroyed by the unjust brand of Fraud placed thereon by the Wyoming Supreme Court? Was it criminal on my part to grant my adversary litigants the favor they asked of me by trying to help them realize a substantial sum of money thru the court sale of their property? Am I a criminal for placing my trust and confidence in the court that brought me in by its process and held me there and made me litigate for the fourth time the same rights, and by following the directions of that court? Why did the Wyoming Supreme Court deny me the equal protection of the universally established law of fraud? Why did the Wyoming Supreme Court deny me the equal application of the universally established law of prior custody of property? Why did the Wyoming Supreme Court deny me the equal protection of the Lis Pendens statutes of the State, and of the lien statutes, and the general law of the State? Why did the Supreme Court hold the receiver of a subsequent lessee in pos-

session of my property, now almost 13 years after the lease expired, and 13 years after the receiver sold that lease, and now why was he directed to hold a second receiver's sale and this time sell my fee simple title to pay the debts of the subsequent lessee, which debts were once paid thru sale of the unexpired term of the lease? Is all this constitutional justice in Wyoming? Why must my wife and children go on year after year deprived of my estate?

Is this Sec. 8, Art. I, Wyo. Constitution—"Justice without sale, denial, or DELAY"—in action? If all this does not amount up to judicial bias, prejudice, failure and incompetency, then what is it?

The campaign letter continues: "We are now fighting a war for democracy. Democracy is constitutional government with equal justice and right for all. Fathers give their sons; the sons give their lives; each and every patriotic citizen gives of his very best to preserve this sacred heritage. But what availeth all this in Wyoming if the Supreme Court is permitted to deny equal justice to a part of its citizens?"

Will every banker who loans his money and goes into court to foreclose his undisputed first trust lien be compelled to litigate year after year, feeding the court costs, making three trips to the Supreme Court, getting a decree of foreclose, then endure a fourth suit litigating all over again, and finally getting foreclosure by sale and deed then find the court taking his trust property out of the hands of his foreclosing court, and placing it in the custody of a subsequent receiver, and by like conduct, find he has lost his original investment, and likewise the property he purchased at the foreclosure sale, and never regain anything? And lose his reputation too?

Will the property owner who, leases his property for a 4 year term, find a receiver of his tenant holding possession

of his property 13 years after the lease expires, pay no rent, and then find the court has ordered that receiver to sell the fee simple title of the lessor to pay the debts of the tenant?

Will the State of Wyoming itself which leases its vast public lands to drilling and mining companies find the receiver of the lessee holding possession of the State's lands 13 years after the lease expires, pay no rent, and then sell the lands of the State to pay the debts of the lessee?

The campaign letter presented conduct of the Wyoming Supreme Court that affected the welfare of every citizen, every property holder, every future litigant, and the State itself. It was a matter of most vital interest in the election of a judge. And petitioner performed a faithful valuable public service to the people in exposing the conduct of the court in these past concluded decisions. There can be but one law, and that is for every citizen and even the State itself alike. The campaign letter was the exercise of the natural attribute and inherent prerogative of American citizenship, and was freedom of speech under both the First Amendment of the Constitution of the United States and Sec. 20, Art. I of the Wyoming Constitution. The judgment of the court herein is an impairment and abridgement of petitioner's constitutional rights thereto. It is a denial of due process of law under the 14th Amendment to the U. S. Constitution; and the conduct of the court in the trial as hereinbefore set forth, and in those particulars constitutes a denial of freedom of speech and to due process of law as aforesaid, and offends and violates the American concept of justice and of petitioner's right to a fair and impartial trial and the judgment of the Wyoming Court herein is void, requiring reversal by this Court.

It is too true, we are now fighting a war to preserve these sacred heritages of the Four Freedoms. The judgment violates petitioner's right to Freedom of Speech, Free-

dom from Fear, fear of being molested in the enjoyment of his citizenship, as the judgment threatens in the future; Freedom from Want, for how long does it take a man to suffer thru being deprived of his livelihood?

Almost a million casualties on the battle front, sacrificing to preserve these Freedoms and the American way of life. What is Americanism without freedom of speech and equal justice? The Government owes the duty to protect petitioner along with every citizen in the enjoyment of his American citizenship. There should not be one single casuality on the home front. The United States Supreme Court must answer with The Last Word.

Conclusion

It is respectfully submitted that this case is one calling for the supervisory powers of this Court by granting the writ of certiorari and thereafter reviewing and reversing the judgment and decision of the Supreme Court of Wyoming.

All of which is respectfully submitted.

JOHN J. SPRIGGS,
Petitioner.